

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 14263 of 1998

Date: 06th February 2006

Between:

1. Budde Venkayamma @ T. Venkamma,

W/o. Late Subbayya, aged 67 years,
R/o. Ramannagudem Village,

Buttayagudem Mandal, W.G.District
and 7 others.

...PETITIONERS

AND

1. The Government of Andhra Pradesh,

Rep. by its Secretary, Social Welfare (F)

Department, Secretariat Buildings,

Saifabad, Hyderabad and 4 others.

R5 is impleaded as per court order
in WPMP 32796/01 dt. 28-12-01.

...RESPONDENTS

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ORDER:

The Special Deputy Tahsildar, Tribal Welfare, Eluru filed a complaint on behalf of 5th respondent Kovvasu Peda Gangaraju and others in S.R.No.28 of 1978,

filed under Regulation 3(2)(a) of Andhra Pradesh (Scheduled Areas) Land Transfer Regulations (1 of 1959) as amended by Regulation 1 of 1970 (hereinafter referred as the Regulations) in respect of Ac.10-00 of land situated in R.S.No.7 Sunnapubatti Chelaka of Chinakapavaram, hamlet of Buttaigudem of Polavaram taluk against Sammangi Bheemaraju, husband of the 8th petitioner, first petitioner Budde Venkayamma @ T.Venkamma and two others for their ejection on the ground that they are not tribals.

2. Petitioners 1 and 8 filed their reply stating that inasmuch as they purchased the land in their possession long prior to 1959, their possession is not hit by the Regulations and so they cannot be ejected.

3. On behalf of 5th respondent and others 3 witnesses were examined as P.Ws.1 to 3, but no documentary evidence was adduced. On behalf of petitioners 1 and 8 and others 5 witnesses were examined as R.Ws.1 to 5 and Exs.B-1 and B-2 were marked.

4. The Special Deputy Collector, Tribal Welfare, Eluru through his order dated 15.03.1979 held that inasmuch as the respondents in S.R.No.28 of 1978 are non-tribals and since they failed to prove that they obtained the land through valid sale deeds or valid transactions, ordered their ejection from the lands in their possession. Aggrieved thereby, petitioners 1 and 8 filed S.R.A.No.18/79 to the Agent to the Government, West Godavari, Eluru, who, through his order dated 24.12.1980, confirmed the order of ejection passed against them. Revision preferred by the petitioners 1 and 8 to the government was dismissed in G.O.Rt.No.1118 dated 30.11.1995. Hence, this petition.

5. Though this petition is filed by 8 petitioners, at the time of hearing learned counsel for the petitioners has withdrawn the petition of petitioners 2 to 7, and so, the petition of petitioners 2 to 7 was dismissed as withdrawn.

6. The contention of the learned counsel for the petitioners is that since the sale deeds in favour of the petitioners 1 and 8 were executed long prior to the coming into force of the Regulation and since the Regulation has no retrospective effect, as held by the apex court in **Deputy Collector and another V. S.Venkata Ramanaiah and another** and since the authorities below i.e., Special Deputy Collector or the Agent or the government have not taken

into consideration the said aspect, and have not even considered the genuineness of the sale deeds relied on by the petitioners 1 and 8 and the ratio in S.Venkata Ramanaiah case (1 supra) the order directing their ejectment is unsustainable.

7. The contention of the learned Assistant Government Pleader is that since petitioners 1 and 8 failed to adduce evidence with regard to the genuineness of the sale deeds relied on by them; they are not entitled for any relief.

8. The contention of the learned counsel for the 5th respondent is that it is 5th respondent and others that are in actual possession and enjoyment of the property and that petitioners 1 and 8 are never in possession of the property, and so, there are no grounds to interfere with the order impugned.

9. Neither the Deputy Collector nor the Agent to Government nor the government have gone into the question whether the documents relied on by the petitioners 1 and 8 are true or not. It is true that petitioners did not examine their vendors to prove the sale deeds relied on by them. But inasmuch as the apex court in S.Venkata Ramanaiah case (1supra) relied on by the learned counsel for the petitioners, held that unless it is shown that initial entry of the transferee was in violation of any provision of law or a statute, such continuance of possession under a originally valid transaction would not get adversely effected, Regulation 3(2)(a) of the Regulations cannot be applied to effect transferee under transaction which was completed before enforcement of regulations. So, question as to from when and under what authority petitioners 1 and 8 are in possession of the land in their occupation is very relevant.

9. Since there is no evidence in that regard, I remit the case to the Special Deputy Collector, Tribal Welfare, Eluru, for fresh disposal, after affording opportunity to both sides to adduce evidence with regard to documents relied on by them. All the parties shall appear before the Special Deputy Collector on 28.02.2006 without any further notice from him, who shall dispose of the case as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order from this court. Since it is represented that subsequent to the filing of the petition before the Special Deputy Collector, a survey was conducted and demarcation was effected, the Special Deputy Collector shall go into the survey numbers as per the survey

conducted, and decide the possession of the petitioners as per law. Till the enquiry before the Special Deputy Collector is completed, *Status quo* as on today shall continue.

C.Y.SOMAYAJULU, J.

Date: 06th February 2006.

BSB